

Message Text

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ACTION L-03

INFO OCT-01 ISO-00 CIAE-00 PM-04 H-02 INR-07 NSAE-00

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TO SECSTATE WASHDC IMMEDIATE 1572

INFO AMEMBASSY BRASILIA

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AMEMBASSY THE HAGUE

AMEMBASSY MEXICO

AMEMBASSY ROME

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BRASILIA FOR ASSISTANT SECRETARY LEWIS

E.O. 11652: N/A

TAGS: ECOSOC EGEN PGOF PFOR

SUBJECT: 61ST ECOSOC: ITEM 13, US PROPOSAL ON ILLICIT PAYMENTS

REF: GENEVA 5975

1. TRANSMITTED BELOW IS THE TEXT OF THE JUNE 30 USDEL (MYERSON) STATEMENT INTRODUCING OUR DRAFT RESOLUTION ON ILLICIT PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS (E/L.586). THE LATTER WAS TRANSMITTED IN REFTEL.

2. IN THE ENSUING DISCUSSION, PAKISTAN, NETHERLANDS, AND ITALY SAID THAT THEY SUPPORTED THE US DRAFT AND THE LATTER
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TWO COUNTRIES ADDED THAT WERE PREPARED TO CONSIDER CO-SPONSORING.

BRAZIL, MEXICO, NIGERIA, AND ARGENTINA, WHILE WELCOMING OUR STATEMENT, INDICATED THAT THE G-77 HAD STUDIED OUR DRAFT AND HAD DEVELOPED THEIR OWN VIEWS ON THIS SUBJECT. ALL DELEGATIONS WHO SPOKE SUPPORTED THE SETTING UP OF AN INFORMAL CONTACT GROUP AS PROPOSED BY THE US.

3. THE ATMOSPHERE IN THE COMMITTEE WAS GOOD--PARTICULARLY IN THAT NO ONE SPOKE AGAINST OUR PROPOSAL, AND EVEN THE KNOWN PROBLEM DELEGATIONS WERE CAUTIOUS IN THEIR REMARKS. ON THE OTHER HAND, THE REAL NEGOTIATION WILL TAKE PLACE IN THE CONTACT GROUP (SCHEDULED FOR MONDAY MORNING, AUGUST 2). THE OUTCOME IS STILL MOST UNCERTAIN.

4. BEGIN TEXT

STATEMENT BY AMBASSADOR JACOB M. MYERSON
IN THE ECONOMIC COMMITTEE OF THE ECONOMIC& SOCIAL COUNCIL
INTRODUCING THE UNITED STATES DRAFT RESOLUTION
ON ILLICIT PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS

MR. CHAIRMAN,

THE DRAFT RESOLUTION WHICH I AM INTRODUCING--CONTAINED IN DOCUMENT E/L 586 AND ENTITLED "ILLCIT PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS"--DEALS WITH A SERIOUS PROBLEM WHICH CONFRONTS US ALL. THIS IS THE PROBLEM OF ILLICIT PAYMENTS IN COMMERCIAL TRANSACTIONS WITH GOVERNMENTS. WE RECOGNIZE, MR. CHAIRMAN, THAT THIS IS PART OF A BROADER ISSUE--THE GENERAL PROBLEM OF CORRUPT PRACTICES IN INTERNATIONAL TRADE AND INVESTMENT. BUT FOR REASONS WHICH I SHALL EXPLAIN, WE BELIEVE THAT IT IS PRACTICAL TO DEAL IMMEDIATELY AND EFFECTIVELY WITH THE SPECIFIC PROBLEM OF TRANSACTIONS WITH GOVERNMENTS. WE CONSIDER, MOREOVER, THAT THE ECONOMIC AND SOCIAL COUNCIL IS THE APPROPRIATE FORUM IN WHICH TO ACT, AND THAT OUR SUCCESS--OR FAILURE--TO ACT EFFECTIVELY IN THIS INSTANCE HAS MAJOR IMPLICATIONS FOR OUR EFFORTS TO DEAL WITH CORRUPT PRACTICES IN GENERAL.

MR. CHAIRMAN, THE 30TH GENERAL ASSEMBLY PASSED BY CONSENSUS RESOLUTION 3514 ENTITLED "MEASURES AGAINST CORRUPT PRACTICES OF LIMITED OFFICIAL USE

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TRANSNATIONAL AND OTHER CORPORATIONS, THEIR INTERMEDIARIES, AND OTHER INVOLVED." MY DELEGATION PARTICIPATED ACTIVELY IN THE DRAFTING OF THAT RESOLUTION. WE DID SO BECAUSE WE ARE CONVINCED THAT CORRUPT PRACTICES IN INTERNATIONAL TRANSACTIONS ARE ETHICALLY WRONG, ECONOMICALLY UNSOUND, AND POLITICALLY HARMFUL.

IN ADDITION TO A GENERAL CONDEMNATION OF ALL CORRUPT PRACTICES, INCLUDING BRIBERY, IN VIOLATION OF THE LAWS AND REGULATIONS OF HOST COUNTRIES, RESOLUTION 3514 ALSO SUGGESTS A PROGRAM OF ACTION, ALBEIT IN GENERAL TERMS:

- THAT GOVERNMENTS HAVE NOT ONLY THE RIGHT BUT THE DUTY TO ADOPT LEGISLATION AND TO INVESTIGATE AND TAKE APPROPRIATE LEGAL ACTION WITHIN THEIR RESPECTIVE NATIONAL JURISDICTIONS TO PREVENT SUCH CORRUPT PRACTICES;
- THAT GOVERNMENTS SHOULD COLLECT AND EXCHANGE BILATERALLY AND, AS APPROPRIATE, MULTILATERALLY, INFORMATION ON SUCH PRACTICES; AND
- THAT GOVERNMENTS SHOULD COOPERATE TO PREVENT SUCH PRACTICES.

MY GOVERNMENT HAS ATTEMPTED TO TRANSLATE THIS PROGRAM INTO REAL ACTION. WE RECENTLY PROVIDED THE SECRETARY-GENERAL OF THE UNITED NATIONS WITH A DETAILED REPORT ON THE STEPS WE HAVE TAKEN. ON THE NATIONAL LEVEL, WE HAVE PROMULGATED NEW REGULATIONS AND OUR ENFORCEMENT AGENCIES HAVE TAKEN VIGOROUS ACTION TO EXPOSE AND PROSECUTE VIOLATORS OF U.S. LAWS IN THIS AREA. MANY OF THE REVELATIONS OF CORRUPT PRACTICES OVER THE PAST SEVERAL MONTHS RESULTED FROM INVESTIGATIONS BY MY GOVERNMENT OF AMERICAN COMPANIES AND THE PUBLICATION OF THE INFORMATION OBTAINED.

IN AN EFFORT TO INSURE THAT THE U.S. GOVERNMENT TAKES THE MOST EFFECTIVE ACTION AT BOTH THE NATIONAL AND INTERNATIONAL LEVEL, PRESIDENT FORD HAS CREATED A CABINET-LEVEL GROUP TO CONDUCT A CO-ORDINATED REVIEW OF ON-GOING EFFORTS AND POSSIBLE ADDITIONAL APPROACHES. THE PRESIDENT HAS RECENTLY ANNOUNCED HIS INTENTION TO ASK CONGRESS FOR ADDITIONAL LEGISLATION TO ENHANCE THE DETERRENT EFFECT OF US LAW WITH REGARD TO ILLICIT PAYMENTS TO OFFICIALS OF FOREIGN GOVERNMENTS.

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ON THE INTERNATIONAL SCENE, MY GOVERNMENT HAS ENTERED INTO BILATERAL AGREEMENTS WHICH PROVIDE FOR THE EXCHANGE OF INFORMATION AND OTHER ASSISTANCE IN CONNECTION WITH THE INVESTIGATION OF ALLEGED IMPROPER PAYMENTS. AND AT THE SECOND SESSION OF THE COMMISSION ON TRANSNATIONAL CORPORATIONS HELD IN LIMA THIS YEAR, WE JOINED WITH OTHER MEMBERS OF THE COMMISSION IN DEVELOPING A WORK PROGRAM WHICH WILL PERMIT US TO WORK COOPERATIVELY TO DEAL WITH THIS PROBLEM.

MR. CHAIRMAN, I WOULD LIKE TO MAKE IT CLEAR THAT IN THESE EFFORTS, THE UNITED STATES IS MOTIVATED NEITHER BY POLITICAL EXPEDIENCY NOR MERE SHORT-TERM GOALS. THE UNITED STATES IS SECOND TO NO COUNTRY IN ITS DETERMINATION TO REVEAL AND ELIMINATE CORRUPT PRACTICES INVOLVING ITS OWN COMPANIES INTERNATIONALLY.

WE EXPECT OUR ACTIONS TO GO A LONG WAY TOWARDS ELIMINATING
ILLCIT PAYMENTS INVOLVING OUR OWN FIRMS. HOWEVER, IT IS EQUALLY
CLEAR TO US THAT THIS PROBLEM IS INTERNATIONAL IN SCOPE AND INVOLVES
A WIDE RANGE OF TRADE AND INVESTMENT TRANSACTIONS. THERFORE,
THE ONLY EFFECTIVE APPROACH TO THE ISSUE IS ONE THAT INCLUDES
COOPERATIVE INTERNATIONAL ACTION BY GOVERNMENTS. ONLY INTERNATIONAL

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ACTION L-03

INFO OCT-01 ISO-00 CIAE-00 PM-04 H-02 INR-07 NSAE-00

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INFO AMEMBASSY BRASILIA

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ACTION CAN ENSURE EFFECTIVE ENFORCEMENT OF EACH NATIONS CRIMINAL
LAWS RELATING TO BRIBERY AND EXTORTION. ONLY COOPERATIVE
INTERNATIONAL ACTION WILL ENSURE THAT RELATIONS BETWEEN COUNTRIES
WILL NOT BE DAMAGED BY THE UNILATERAL DISCLOSURE OF CORRUPT

ACTION INVOLVING FIRMS AND GOVERNMENT OFFICIALS.

THIS REQUIREMENT FOR INTERNATIONAL COOPERATIONS IS RECOGNIZED IN OPERATIVE PARAGRAPHS 4 AND 5 OF RESOLUTION 3514. IT IS IN THE SPIRIT OF THAT RESOLUTION AND OUR DESIRE TO CARRY OUT ITS MANDATE, THAT WE HAVE PROPOSED, INITIALLY IN LIMA LAST MARCH, THAT AN INTERNATIONAL TREATY ON ILLICIT PAYMENTS BE NEGOTIATED.

WE SEEK BY OUR RESOLUTION ACTION TO ELIMINATE PRACTICES LIMITED OFFICIAL USE

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WHICH ARE RECOGNIZED AS CRIMINAL UNDER THE LAWS OF NEARLY ALL COUNTRIES IN THE WORLD--ILLICIT PAYMENTS TO GOVERNMENT OFFICIALS IN CONNECTION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS. MY GOVERNMENT BELIEVES THAT WE MUST CONTINUE TO RELY ON NATIONAL LEGISLATION TO DEFINE THOSE PAYMENTS WHICH ARE TO BE PROHIBITED, AND TO ESTABLISH THE REQUISITE PROCEDURAL SAFEGUARDS IN THE ENFORCEMENT AREA. LET ME EMPHASIZE THAT SUCH LAWS ARE ON THE BOOKS OF ALMOST ALL COUNTRIES. WE ARE NOT PROPOSING AN EFFORT TO WRITE INTERNATIONAL CRIMINAL LAW IN THIS AREA. BUT INTERNATIONAL COOPERATION BY BOTH HOME AND HOST COUNTRIES IS NECESSARY TO MAKE EFFECTIVE THE ENFORCEMENT OF NATIONAL LAWS. ONLY INTERNATIONAL ACTION WITHIN THE FRAMEWORK OF A CONVENTION CAN ENSURE EFFECTIVE ENFORCEMENT OF EACH NATION'S RESPECTIVE CRIMINAL LAWS RELATING BY BRIBERY AND EXTORTION.

WE WISH TO ASSURE THE COMMITTEE IN THE STRONGEST TERMS POSSIBLE THAT THE ESTABLISHMENT OF A COMMITTEE AS PROPOSED IN OUR RESOLUTION WOULD IN NO WAY INTERFERE WITH OR DELAY ACTION BY THE TRANSNATIONAL COMMISSION ON THE PRIORITY ITEM OF DRAFTING A CODE OF CONDUCT. LANGUAGE TO THIS EFFECT IS CONTAINED IN OUR RESOLUTION. THE U.S. IS COMMITTED TO PARTICIPATING FULLY AND CONSTRUCTIVELY IN THE WORK PROGRAM ESTABLISHED BY THE TRANSNATIONAL CORPORATION COMMISSION, INCLUDING ITS WORK ON A CODE OF CONDUCT. INDEED, IT APPEARS TO US THAT THE ELABORATION OF A DRAFT AGREEMENT BY THE AD HOC COMMITTEE PROPOSED IN THE U.S. RESOLUTION WOULD SUPPLEMENT THE WORK ON A CODE OF CONDUCT AND, AT THE SAME TIME, HELP CREATE AN ATMOSPHERE OF COOPERATION AND PROGRESS WHICH COULD ONLY BENEFIT WORK ON THE CODED. IT IS PRECISELY BECAUSE WE DO NOT BELIEVE THAT WORK ON ILLICIT PAYMENTS SHOULD INTERFERE WITH WORK BY THE COMMISSION THAT WE BELIEVE THE MANDATE OF THE AD HOC COMMITTEE SHOULD BE SET OUT WITH PRECISION, AND THUS BE LIMITED TO THE ISSUE OF ILLICIT PAYMENTS. SHOULD THE COMMITTEE BE ASKED TO EXAMINE THE FULL RANGE OF CORRUPT PRACTICES ITS WORK WOULD ALMOST TOTALLY DUPLICATE THE TASK OF THE COMMISSION AS SET OUT IN RESOLUTION 3514.

WE FIRST MADE THE PROPOSAL FOR AN INTERNATIONAL AGREEMENT LAST MARCH IN LIMA BEFORE THE UN COMMISSION ON TRANSNATIONAL CORPORATIONS. THE COMMISSION FORWARDED OUR PROPOSAL TO THIS

BODY AND RECOMMENDED THAT PRIORITY ACTION BE TAKEN ON THIS ISSUE.

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IN THE MONTHS SINCE THE LIMA MEETING MY GOVERNMENT HAS CONSULTED EXTENSIVELY ON ITS PROPOSAL IN CAPITALS AND FOR THE PAST THREE WEEKS WE HAVE SOUGHT THE VIEWS OF AS MANY DELEGATIONS AS POSSIBLE HERE. WE HAVE ENDEAVORED TO TAKE THESE VIEWS INTO ACCOUNT IN THE FORMULATION OF OUR RESOLUTION. WE ARE GRATEFUL FOR THE EXTENSIVE AND THOUGHTFUL COMMENTS DELEGATIONS HAVE PROVIDED TO US--ESPECIALLY AS WE RECOGNIZE THE GREAT BURDEN PUT UPON ALL DELEGATIONS BY THE EXTREMELY HEAVY SCHEDULE OF MEETINGS. WE ARE, OF COURSE, WILLING TO ENTERTAIN FURTHER SUGGESTIONS. IN THIS REGARD, PERHAPS THE MOST EFFICIENT MEANS OF PROCEEDING WOULD BE A CONTACT GROUP TO BE ESTABLISHED BY THE CHAIRMAN. WE WOULD BE PREPARED TO PARTICIPATE IN SUCH A GROUP OR ANY OTHER CONTACT GROUP THAT MIGHT BE ESTABLISHED. OUR ONLY CONCERN AND DESIRE IS THAT WE GET DOWN TO WORK RIGHT AWAY. IT IS IN OUR VIEW ESSENTIAL THAT THE INITIAL STEPS BE TAKEN AT THIS SESSION TO LAY THE FOUNDATION FOR EFFECTIVE ACTION INTERNATIONALLY.

WE HAVE THUS PLACED BEFORE YOU A RESOLUTION CALLING FOR THE IMMEDIATE ESTABLISHMENT OF A COMMITTEE OF EXPERTS TO EXAMINE THE PROBLEM OF ILLICIT PAYMENTS AND TO STUDY THE CONTENTS AND SCOPE OF A DRAFT AGREEMENT ON MEASURES TO COMBAT ILLICIT PAYMENTS TO GOVERNMENT OFFICIALS IN CONNECTION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS. THE EXPERTS SHOULD BE FREE TO EXAMINE VARIED APPROACHES TO THE CONTENTS OF SUCH A TREATY. BUT WE ARE CONVINCED THE MANDATE GIVE THIS BODY SHOULD BE RESPONSIVE TO THE COMPELLING ARGUMENTS FOR ACTION AND SHOULD PROVIDE FOR DRAFTING OF AN AGREEMENT.

OUR CONSULTATIONS HAVE CONVINCED US THAT THERE IS A BROAD INTERNATIONAL CONSENSUS ON THE NEED TO TAKE IMMEDIATE AND EFFECTIVE ACTION TO CURB ILLICIT PAYMENTS. IT IS IMPERATIVE THAT WE TAKE SUCH ACTION PROMPTLY WHILE PUBLIC CONCERN IS STILL HIGH. FURTHER, THIS ISSUE IS ONE IN WHICH THE INTERESTS OF BOTH DEVELOPED AND DEVELOPING NATIONS COINCIDE.

THE FEASIBILITY AND EFFICACY OF INTERNATIONAL COOPERATION IN REGARD TO ILLICIT PAYMENTS, BASED ON AN INTERNATIONAL AGREEMENT HAS ALREADY BEEN SHOWN BY THE SIX BILATERAL AGREEMENTS THE UNITED STATES HAS NEGOTIATED OVER THE PAST FEW MONTHS. THESE AGREEMENTS

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INVOLVE COUNTRIES IN EUROPE, SOUTH AMERICA, AFRICA AND ASIA--
COUNTRIES WITH DIFFERING LEGAL SYSTEMS AND LEVELS OF DEVELOPMENT.

THE AGREEMENTS HAVE PROVEN TO BE OF CONSIDERABLE ASSISTANCE
TO THE COUNTRIES CONCERNED IN ENFORCING THEIR LAWS. BUT THEY
HAVE LIMITATIONS. THE AGREEMENTS HAVE BEEN NOTIATED ONLY
AFTER CRIMINAL ACTIVITIES HAVE BEEN ALLEGED, AND THUS DO NOT
SERVE THE SAME DETERRENT EFFECT AS WOULD AN AGREEMENT ALREADY
IN PLACE. SO, TOO, THE AGREEMENTS RELATE ONLY TO SPECIFIC CASES
AND ARE NOT OF GENERAL APPLICABILITY. FINALLY, BECAUSE THEY ARE
BILATERAL, THEIR IMPACT IS OF NECESSITY NARROWER THAN WOULD
BE A MULTILATERAL AGREEMENT. THESE ARE LIMITATIONS WE SEEK
TO ELIMINATE BY THE NEGOTIATION OF A PERMANENT MULTILATERAL
CONVENTION.

IN CONCLUSION, I URGE THAT EACH DELEGATION CONSIDER
CAREFULLY THE MERITS OF MY GOVERNMENT'S PROPOSED RESOLUTION. I AM
CONFIDENT THAT AN OBJECTIVE EXAMINATION OF OUR PROPOSAL WILL
RESULT IN WIDESPREAD SUPPORT AND ACTION NOW, FOR IT GIVES US
THE OPPORTUNITY TO DEMONSTRATE OUR DETERMINATION TO COME TO GRIPS
AT LAST WITH THIS MOST PERNICIOUS PROBLEM.

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